IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

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| DALE MICHAEL HANSON,<br><br>Plaintiff,<br><br>vs.<br><br>VALERIE WILSON,<br><br>Defendant. | ) | Cause No. CV 05-94-M-LBE<br><br><br><br>FINDINGS AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE |

On May 25, 2005, Plaintiff Dale Hanson applied to proceed *in forma pauperis* with this action under 42 U.S.C. § 1983. Hanson's Complaint was received in the Billings Division on February 23,

2005. *See* Remark (June 24, 2005).[1] The *forma pauperis* application remains pending.

On August 2, 2005, Hanson filed a "Motion for an Injunction Against State of Montana." He seeks an order preventing the State of Montana from prosecuting or detaining him on the grounds that he failed to register as a sex offender. He points out that he is currently appealing this Court's denial of federal habeas relief against the conviction that gave rise to the registration requirement.

The Eleventh Amendment to the United States Constitution precludes suit against the State of Montana in federal court unless the State waives its sovereign immunity. Montana has not done so. Moreover, the State of Montana is not a party to this action. The relief Hanson seeks is not available in this action.

Further, Hanson's request is fundamentally ill-conceived. His conviction remains valid until it is overturned, and his obligation to register as a sex offender continues for as long as his conviction remains valid. If his conviction is overturned, then he will not be required to register. The federal courts are available to give Hanson an opportunity to prove that his

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[1] The complaint was not filed at that time due to United States Magistrate Judge Richard W. Anderson's recommendation on February 23, 2005, that three other, similar actions should be dismissed as premature. *See Hanson v. Donohoe*, No. CV 05-03-BLG-RWA; *Hanson v. Harball*, No. CV 05-04-BLG-RWA; *Hanson v. Holton*, No. CV 05-23-BLG-RWA.

conviction is invalid, not to suspend his conviction until the State proves it is valid.

Based on the foregoing, the Court enters the following:

**RECOMMENDATION**

Hanson's motion for an injunction against the State of Montana (doc. 3) should be DENIED.

The Clerk of Court shall serve a copy of the Findings and Recommendation of the United States Magistrate Judge upon the Plaintiff. Plaintiff is advised that, pursuant to 28 U.S.C. § 636, any objections to these findings must be filed or delivered to prison authorities for mailing within twenty (20) calendar days after the date on the certificate of mailing below, or objection is waived.

Hanson must immediately inform the Court of any change in his address.

DATED this 16th day of November, 2005.

/s/ Leif B. Erickson
Leif B. Erickson
United States Magistrate Judge